



# TENNESSEE REAL ESTATE News-Journal

An Official Publication of the Tennessee Real Estate Commission

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## Beware of Outdated Surveys

By Reid Brogden, TREC General Counsel

If you are a licensee and you are passing out old surveys to potential buyers, you may be providing those prospects with misinformation. Further, if you provide those surveys without obtaining the permission of the surveyor, you may be in violation of copyright law.

Surveys are only reliable for a specific date. Frequently there are circumstances which affect the property change. There may be changes in easements, flood areas and drainage. Also, encroachments may exist on the property that did not exist at the time of the survey. If the survey you give prospects is not accurate, a court could hold you liable for providing a party with misinformation.

A little known fact can make the damages caused from an old survey even worse. Lenders are typically provided with full title coverage which includes survey matters. An owner's policy typically does not provide coverage for matters of survey. As such, with no title insurance to back them, an owner damaged by an old survey will probably look to the real estate licensee for damages.

Finally, copyright law requires that you obtain the permission of the surveyor before you redistribute the survey. The unauthorized distribution of maps, surveys or loan inspections can constitute copyright infringement.

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## A Word to the Wise

By Commissioner Betty L. Smith

There are three words of advice that should be taught and retaught to every licensee. No, they are not location, location, location. They are disclosure, disclosure, disclosure; disclosure of anything that deviates from the most basic transaction.

Forms are available for Property Condition Disclosure, Lead-Based Paint Disclosure, Agency Disclosure and Personal Interest Disclosure. All of these are fill-in-the-blank, easy to use forms. There are, however, other items that, if they occurred or if they are true, should be disclosed. Has there been a fire in or on the property? Have there been foundation repairs, or are such repairs needed? Does a main sewer line run under the house? Is a shopping center slated to be built right next door? Are there plans to

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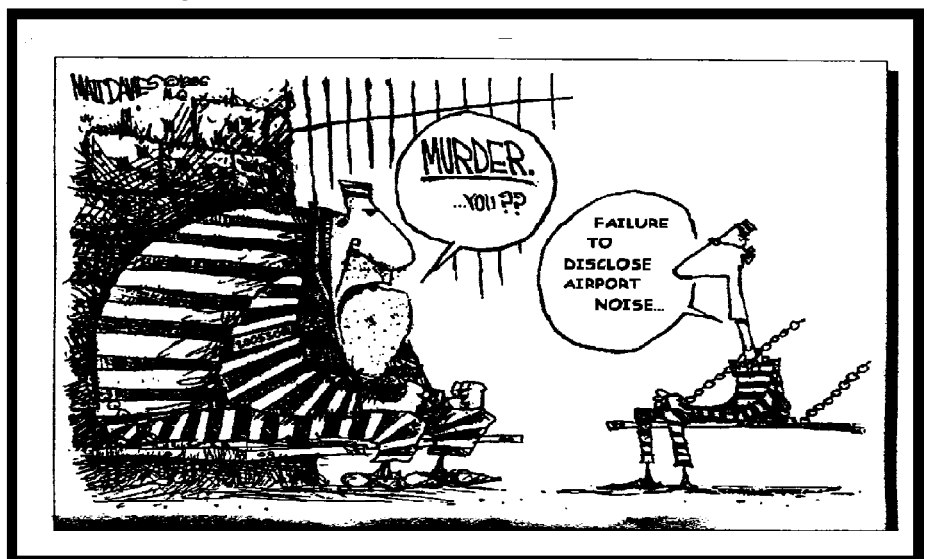
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## Commissioner Westley Receives Awards

Commissioner L. A. Westley was honored two times for outstanding service to the real estate industry in 1999. He was named 1999 REALTOR® of the Year by the Memphis Area Association of REALTORS® and also received the 1999 Tennessee Association of REALTORS® Presidential Award. Commissioner Westley has been licensed in Tennessee for over 35 years and is the owner and principal broker for Westley

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## Frequently Asked Questions

### *Can a Principal Broker place earnest money in an interest bearing account?*

While the Commission does not encourage placing earnest money in an interest bearing account, it is not a violation of the Brokers' Act. However, if an interest bearing account is selected, the broker must disclose that information and execute a written agreement with the owner of the money concerning who will receive any interest earned on that money. The broker must keep a detailed and accurate accounting of the precise sum of interest earned for each separate deposit.

### *How often must I renew my real estate license?*

All Tennessee real estate licenses expire on December 31 of all even numbered years (2000, 2002, etc.) All renewal applications for licensees who hold an active license are mailed to the firm of record where they are affiliated. Renewal applications for inactive or retired licensees are mailed to their home addresses. Active licensees cannot avoid payment of the renewal fees by inactivating or retiring their licenses.

### *How do I retire my license if I am not currently working in the real estate profession?*

This change in status requires the

filing of a change of status form (TREC FORM 1) along with the correct fee. This form may be obtained from the Commission's administrative office or from the Commission's web site:

[www.state.tn.us/commerce/trec](http://www.state.tn.us/commerce/trec)

Licensees requesting a retirement/inactive status who are subject to an educational requirement will be placed in an inactive status until the education requirements (continuing education or Course for New Affiliates or broker education) have been completed. Licensees cannot avoid completion of any educational requirement by changing the status of their license. Upon completion of the outstanding education requirements the license will automatically be placed in the retired status. Active licensees cannot avoid payment of the renewal fees by inactivating or retiring their licenses.

### *I recently upgraded my affiliate broker license to a broker license. What are my educational requirements?*

All new brokers must have a cumulative total of 240 hours of TREC approved education by the end of three years after the date the broker license was issued.

*I am seeking licensure in another state or another profession and need Tennessee to provide certification of my real estate license. How do I request this*

### *certification?*

A "Certification Request Form" can be obtained from the TREC administrative office. This form is to be completed in its entirety and mailed to TREC with a check or money order for \$10.00 to cover the processing of the information.

### *How can I obtain a listing of all the TREC approved education I have completed?*

A transcript listing all TREC approved education in your licensure file can be obtained by sending a check for \$10.00 to TREC along with a written request for that document.

## TREC Meeting Dates

May 3 & 4	Chattanooga
June 7 & 8	Nashville
July 12 & 13	Morristown
August 2 & 3	Nashville
September 6 & 7	Nashville
October 11 & 12	Nashville
November 1 & 2	Kingsport
December 6 & 7	Nashville

**Nashville Meetings are held in the Davy Crockett Tower, 500 James Robertson Parkway.**

**All meetings are open to the public and licensees are encouraged to attend.**

# DISCIPLINARY ACTION

## JANUARY 2000

**Sally C. Bowers**

License No. AF249608  
Knoxville, TN

**Agreed Citation:**

Respondent ran a blind ad for two different properties.

**Penalty:** Respondent paid a \$250.00 civil penalty.

**Bryant Realty Co.**

License No. 253686  
Greenville, TN

**Agreed Citation:** An audit of the firm revealed files with inappropriate written disclosure and inappropriate handling of deposits and earnest money.

**Penalty:** Respondent paid a \$500.00 civil penalty.

**Cooper Homes Inc.**

License No. 230123  
Loudon, TN

**Agreed Citation:** An audit of the firm revealed inappropriate handing of deposits and earnest money.

**Penalty:** Respondent paid a \$500.00 civil penalty.

**Anita E. Edwards**

License No. AF203288  
Nashville, TN

**Agreed Citation:**

Respondent ran a blind newspaper ad.

**Penalty:** Respondent paid a \$250.00 civil penalty.

**Elkins Real Estate & Auction Co.**

License No. 241506  
Rogersville, TN

**Agreed Citation:** An audit revealed an unlicensed branch office was being advertised and there was inappropriate handling of deposits and earnest money.

**Penalty:** Respondent paid a \$500.00 civil penalty.

**Linda C. Hassell**

License No. AF253340  
Smyrna, TN

**Agreed Citation:**

Respondent ran a blind newspaper ad.

**Penalty:** Respondent paid a \$250.00 civil penalty.

**Shirley Landry**

License No. AF272752  
**Mary Oliff**  
License No. BR266897  
Huntsville, AL

**Agreed Order:**

Respondents Landry and Oliff erroneously believed they could co-list property in Tennessee without Landry being properly licensed. Landry and Oliff were advised that such transactions require licensure. Ms. Landry has subsequently obtained a Tennessee license.

**Penalty:** Respondents together paid a \$250.00 civil penalty.

**Thomas Lynch**

License No. AF14784  
Winchester, TN

**Consent Order:** Mr. Lynch agreed to revocation of his license after failing to comply with terms of a previous order.

**Penalty:** Revocation of license.

**Carol E. Mattingly-Burnett**

License No. AF269901  
Big Sandy, TN

**Agreed Citation:**

Respondent ran a blind newspaper ad.

**Penalty:** Respondent paid a \$250.00 civil penalty.

**Troy P. Vanatta**

License No. AF260408  
South Haven, MI

**Agreed Citation:**

Respondent failed to answer two complaints in a timely fashion.

**Penalty:** Respondent paid a \$500.00 civil penalty.

## FEBRUARY 2000

**Marlin Construction Co.**

License No. 1286  
Knoxville, TN

**Agreed Citation:** Money was not deposited into an escrow account and personal interest was not disclosed.

**Penalty:** Respondent paid a \$500.00 civil penalty.

## MARCH 2000

**David Alley, Jr.**

License No. PB16727  
Knoxville, TN

**Agreed Citation:**

Respondent ran a blind ad in a newspaper.

**Penalty:** Respondent paid a civil penalty of \$250.00.

**Kenneth Gilbert**

License No. AF256984  
& Roan Valley Real Estate  
License No. FM255453  
Mountain City, TN

**Consent Order:**

Respondent failed to file written personal interest disclosure.

**Penalty:** Respondents jointly paid a civil penalty of \$2000.00.

**Lisa L. Henson**

License No. AF269959  
Memphis, TN

**Agreed Citation:**

Respondent failed to carry errors and omissions insurance while actively providing real estate services.

**Penalty:** Respondent paid a \$250.00 civil penalty.

Continued on Page 4

**John W. Testerman Realty Company**

License No. FM246404  
Knoxville, TN

**Agreed Citation:** An audit of the firm revealed respondent did not display licenses, files were kept in an unlicensed sales office where licenses of two affiliates were displayed and a commission was accepted from someone other than the principal broker.

**Penalty:** Respondent paid a \$1000.00 civil penalty.

**Joseph L. Johnston**

License No. AF244786  
Memphis, TN

**Consent Order:**

Respondent compensated a non licensed person for real estate activities and allowed an unauthorized person to use his Multiple Listing Services card.

**Penalty:** Respondent agreed to a ninety (90) day suspension of his real estate license from 3/1/00 to 6/1/00 and will pay a civil penalty of \$2500.00 by June 1, 2000.

**Michelle L. Moore**

License No. AF262643  
Brentwood, TN

**Agreed Order:**

Respondent failed to timely renew her real estate license and continued to perform real estate business.

**Penalty:** Respondent paid a civil penalty of \$1000.00.

**Nicky Joe Stafford Real Estate & Auction**

License No. FM246608  
McKenzie, TN

**Agreed Citation:**

Respondent failed to account for or remit earnest money.

**Penalty:** Respondent paid a civil penalty of \$500.00.

**Tommie L. Shaw**

License No. PB231693  
Memphis, TN

**Consent Order:** An audit of the respondent's firm found multiple violations of the regulations of the Commission. The Respondent was also made a defendant in a Federal lawsuit alleging fraudulent activity.

**Penalty:** Respondent voluntarily surrendered his license pending outcome of any civil or criminal litigation. Respondent further consented to not manage any real estate firm during this period.

**Kenneth A. Shaw**

License No. AF249708

**Kwane N. Morris**

License No. AF257127

**Tujuana R. Perkins**

License No. AF261659

**Venesia D. Brown**

License No. AF 254839

**Aaron D. Perkins**

License No. AF 253771

**Dwan A. Brown**

License No. AF252550  
All of Memphis, TN

**Consent Order:** All respondents are defendants in a federal lawsuit alleging fraudulent activity.

**Penalty:** Respondents agree to voluntarily surrender their licenses pending the outcome of any civil or criminal litigation. Respondents further agree to not manage or direct any real estate firm during this period.

Disciplinary Action imposed by the Tennessee Real Estate Commission is reported to the Association of Licensing and Law Officials (ARELLO) and can be accessed by any state or jurisdiction that is a member of that organization.

**Beware of Outdated Surveys by Reid Brogden, continued from page 1**

In conclusion, real estate licensees need to cooperate with surveyors and lenders to make sure that their clients are provided with the most reliable and accurate information possible.

**A Word to the Wise by Betty L Smith continued from Page 1**

widen the street and take half of the front yard? Does the sewer line sometimes back up? Is there a large ugly stain under the area rug? Does the bathtub back up when it rains? Is the property being used for multi-family but the zoning is single family?

Sometimes disclosure requires educating your sellers if they are not inclined to be perfectly honest or if the problem has simply slipped their minds.

Errors and omissions insurance statistics show that misrepresentation is the number one reason for E & O claims. Many, many of these claims would never come into being if there had been proper disclosure.

Save yourself and your Broker a lot of worry and disclose, disclose, disclose.

**A Recent Comment in the Wyoming Real Estate Review stated the following:**

**Education is what you get from reading the small print in a contract-**

**Experience is what you get from not reading it.**

## Processing Complaints

By Reid Brogden, TREC General Counsel

One of the primary functions of the Tennessee Real Estate Commission is to regulate real estate licensees through the disciplinary process. I have found that the more familiar licensees are with the process of disciplinary action, the less chance they have of running into problems. The toughest job members of the Commission have is the discipline of fellow real estate professionals. Therefore, anything that can be done to inform licensees and prevent the need for action by the Commission is welcomed.

Licensees are usually brought before the Commission as the result of a complaint filed against them by an individual. This complaint is forwarded to the licensee for response. The content of the complaint and the response dictates whether the Commission takes action. As we know, a bad deal is not necessarily a violation of the brokers act. Also, many complaints involve personal grievances. The Commission is always quick to recognize these instances.

The licensee's response needs to be clearly stated and specifically respond to the allegations made in the complaint. If there are personal allegations made, it does not behoove the licensee to respond in a similar fashion. Most often, a professionally stated response by the licensee will summarily dispose of an unfair allegation.

In a situation where the licensee has made a mistake and has engaged in a violation, whether intentional or not, the most successful approach to date has been one of admission and acceptance. The Commission has bent over backwards to be fair with licensees who admit their mistakes.

However, if the state has to go to the time and expense of a formal hearing to prove allegations then the penalties can be more harsh, including the suspension and revocation of the license, along with the imposition of substantial civil penalties.

The most important impression that I have received from the Commission is that the individuals on the Commission have taken a fair, honest and open stance toward dealing with licensees. The most important consideration in disciplinary action is the protection of the public interest. It is also important to protect the rights of the licensee. Real Estate is usually the livelihood of the individual brought before the Commission. As such, the Commission makes every effort to ensure that all licensees are treated in an equitable manner.

The Commission averages three to four hundred complaints per year. These complaints are processed, and discipline is assessed or the complaint is dismissed. The typical turn around time is ninety (90) to one hundred eighty (180) days. The table below indicates a breakdown of the types of complaints.

Complaints = 359	
Earnest money/deposit money/proceeds	21%
Offers/contracts	16%
Performance dissatisfaction /diligent care duties	11%
Property disclosure/repairs	14%
Property management	7%
Misrepresentation	5%
Self dealing/personal interest/improper conduct	4%
Unlicensed activity	4%
Timeshare	3%
Advertising/marketing	3%
Boundary	3%
New construction	3%
Commission/rebates	2%
Square footage	2%
Miscellaneous	2%

The following auditor's notes were taken from 56 completed firm inspection forms (some firms had more than one of these notes applied to them)

■ Twenty seven indicated the principal broker needed to review with affiliates proper use of agency and property disclosure and personal interest disclosure.

■ Twenty one indicated the principal broker needed to review with affiliates the requirement for dates and signatures on contracts and file documentation.

■ Seventeen indicated the principal broker needed to review the need for timely deposit and documentation of earnest money.

■ Seven indicated the principal broker needed to review with affiliates the need to document any agreement to deviate from original contract provisions.

■ Two firms had files that were incomplete with missing documentation.

The Commission hopes that this information is helpful to licensees. Licensees need to stay updated on current regulations in order to avoid problems. If licensees receive complaints, they should follow the recommendations contained in this article to assure that the complaint process goes as smoothly as possible.

**Information on Law and Rule Changes will be presented at the TREC Year 2000 Seminars.**

**Please see schedule of seminars on Page 7**

## More Licensee Information Available On-Line

Downloadable files containing licensee information are now available on the internet. This data can be obtained by contacting the following address on the world wide web:

**[www.state.tn.us/commerce/trec](http://www.state.tn.us/commerce/trec)**

Click on the last button on the left hand side of the home page labeled *Online Resources List*.

Information that can be obtained from this site includes the following:

- Alpha File of Licensees in Active Status
- Zip Code File of Licensees in Active Status
- Licensee File by County
- Alpha File of Firms in Active Status
- Zip Code File of Firms in Active Status
- Firms by County
- Alpha File of Rental Location Firms in Active Status
- Alpha File of Rental Location Agents in Active Status
- Alpha File of Time Shares Registered in Active Status
- Alpha File of Vacation Lodging Services in Active Status
- Listing of Approved Schools with Approved Courses
- Active Real Estate Firms with affiliated licensees by County

The reports can either be read on line or downloaded and printed using an executable reader program such as Adobe Acrobat Reader.

## Commission and TREC Administrative Staff Welcome Ideas for News- Journal

The Tennessee Real Estate Commission realizes that communication between it and licensees is of great importance. At its March meeting, discussion indicated input from licensees regarding topics for future articles would be welcomed. Please contact the Commission by mail, phone or e-mail to present ideas that would be of benefit to licensees. Following are the addresses to reach the Tennessee Real Estate Commission:

Suite 180  
500 James Robertson Parkway  
Nashville, TN 37243-1151  
  
615-741-2273 or  
800-342-4031  
  
[trec@mail.state.tn.us](mailto:trec@mail.state.tn.us)

The Commission looks forward to receiving your ideas.

Please access the TREC Web Pages frequently. Pages contain laws and rules governing real estate. Forms can be downloaded to expedite address changes, transfers, status changes and complaints.

## Hints for a Successful License Renewal

All Tennessee Real Estate Licenses expire on December 31, 2000. Renewal applications for all licensees who are active are sent to the firm address - NOT to the home address. Be sure to check with your principal broker to determine when yours arrives at the firm.

All education requirements for affiliate brokers must be completed by mid-night December 31, 2000. Completing your educational requirements in advance of that date is always beneficial.

Send renewal fees to TREC as soon after receiving the application as you can.

### Commissioner Westley Receives Awards Continued from Page 1

& Associates in Memphis, Tennessee. He was appointed to serve on the Tennessee Real Estate Commission in 1998 by Governor Sundquist.

Commissioner Westley has been very active in his community by serving on Community Development Advisory Committees and the Shelby County Board of Equalization. A former teacher with the Memphis City School System, Commissioner Westley is very much interested in real estate education, both prelicensing education and continuing education. Commissioners Bobbi Gillis and Betty Smith (both past Memphis REALTORS® of the Year) stated L. A. has made major contributions to the industry and justly deserves both awards.

## Year 2000 TREC Seminar Schedule

This year, TREC will present two different seminars at ten sites across the state. One course will contain general information needed by all licensees and the other will be geared toward Principal Brokers. The Principal Broker seminar may also be attended by affiliated licensees. Each seminar is approved for 2 hours of continuing education and there is no fee for attending. Times listed are all local times.

In several of the cities the sites have not yet been selected. Please monitor the TREC web pages to learn when the sites have been selected.

The TREC website address is: [www.state.tn.us/commerce/trec](http://www.state.tn.us/commerce/trec)

Seminar Date	City	Place	Type Seminar	Time
July 13	Morristown	Ramada Inn I 81 & Hwy 25 E	General Broker	9:00 AM 1:00 PM
July 17	Nashville	306 Gay St.	Broker General	9:00 AM 1:00 PM
July 18	Nashville	306 Gay St.	General Broker	9:00 AM 1:00 PM
July 26	Chattanooga	3501 Amnicola Hwy	Broker General	9:00 AM 1:00 PM
July 27	Chattanooga	3501 Amnicola Hwy	General Broker	9:00 AM 1:00 PM
August 15	Jackson	40 Old Hickory Cove	Broker General	9:00 AM 1:00 PM
August 16	Memphis	6393 Poplar Ave.	General Broker	9:00 AM 1:00 PM
August 17	Memphis	6393 Poplar Ave.	Broker General	9:00 AM 1:00 PM
August 30	Cookeville	Holiday Inn 970 S. Jefferson	General Broker	9:00 AM 1:00 PM
September 12	Knoxville	609 Weisgarber Rd.	General Broker	9:00 AM 1:00 PM
September 13	Knoxville	609 Weisgarber	Broker General	9:00 AM 1:00 PM
September 14	Bristol	ETSU Bristol Campus 1227 Volunteer Prkw	General Broker	9:00 AM 3:00 PM
September 19	Tullahoma	Motlow Comm. Col	General Broker	9:00 AM 1:00 PM
September 28	Clarksville	Riverview Inn 50 College St.	Broker General	9:00 AM 1:00 PM

## Tennessee Real Estate Commission

500 James Robertson Parkway, Suite 180  
Nashville, TN 37243-1151

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All Tennessee Real  
Estate Licenses Expire  
December 31, 2000.

Look for your license  
renewal applications at  
the firm where you are  
affiliated.

"The Tennessee Department of Commerce  
and Insurance is committed to principles of  
equal opportunity, equal access, and  
affirmative action." Contact the EEO  
Coordinator or ADA Coordinator  
(615) 741-0481, for TDD (615) 741-7190



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### TREC Phone Numbers:

(615) 741-2273 or 1-800-342-4031

Web - [www.state.tn.us/commerce/trec](http://www.state.tn.us/commerce/trec)

Personnel and Area of Responsibility with  
direct phone numbers.

**Conell House** - (615) 741-7548 Affiliate  
broker applications and licenses

**Mary Bauman** - (615) 741-3664 Broker  
applications and license issuance, Rental  
Location Licenses and E&O Insurance

**Paula Glover** - (615) 741-7549 Continuing  
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**Chip Medlen** - (615) 741-0627 Firm  
applications, Name changes, Firm &  
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Broker Release

**Karen Jarrett** - (615) 741-7550 License  
Certifications

**Sue Kerley** - (615) 741-7553 Complaint  
Processing

**Gil Dyer** - (615) 741-3615 Time Share and  
Vacation Lodging Services

**Danny Webb** - 253-1232 Retirement &  
Inactive Status Changes, Reactivation of  
Licenses

**Donna Wright** - 741-4043 Reinstatements,  
Timeshare Projects Registration & Renewal

### Errors & Omissions Insurance

#### Contractor:

FRONTIER INSURANCE COMPANY  
1-888-248-2444 OR (615) 248-2444